SUPREME COURT OF THE UNITED STATES.

No. 85.

RICHARD B. ALEXANDER, PLAINTIFF IN ERROR,

vs.

MOSES GRAHAM, DEFENDANT IN ERROR.

INDEX.

	Original.	Print.
Petition to the honorable Roger B. Taney	2	3
Order directing writ of error to issue	5	4
Writ of error	6	4
Citation	8	5
Copy of appeal bond	10	5
Style of court	12	6
Parties	12	6
Petition for freedom	13	7
Plea of not free and issue joined	13	7
Venire facias ordered	13	7
Jury	14	8
Special verdict	14	8
Continuance curia advisare vult	16	9
Judgment of the court for defendant on verdict	17	9
Appeal to Supreme Court	18	11
Clerk's certificate and seal	18	11
Will of Miss Brown	20	10

S. D. Langtree, Print.

To the Honorable Chief Justice Taney.

The petition of Richard B. Alexander humbly represents that at March term 1840 of the circuit court of the District of Columbia, for the county of Washington, on a petition for freedom filed by Moses Graham against the said Richard B. Alexander, complaining of illegal detention in slavery, judgment was rendered for the said Richard B. Alexander, but not as full and complete a judgment as ought in law have been rendered in the case, as will more fully appear by a copy of the record and proceedings in the said cause and hereto annexed. And the said Richard B. Alexander assigns error as follows:

The first fact the jury find in the special verdict (bearing on the point in error) is, "that Miss Brown sold Milly and her two children to Mrs. Alexander, she to be free at 31, and her children then, born and then afterwards to be born, at the same age." They further find that "Miss Brown by her will recognized the terms of sale of such negroes to be that they were to be free at 31 years of age." Upon a reference, however, to the will of Miss Brown (in the transcript of the proceedings) it will be found that the petitioner (Moses Graham) is not mentioned or referred to; is not emancipated by any possibility of construction which the court could, by law, give to the instrument.

Now the error assigned by the defendant is in the erroneous application of the law to the above facts. The law of Virginia 1792 Chap. 103, Section 36 (and applicable to this case) provides that slaves shall be emancipated either by last will and testament or by deed recorded in the county or corporation court. Any other method of emancipation is void.

As such is the law, the fact found by the jury, that "Milly" (mother of the petitioner) "and her children, were sold to Mrs. Alexander, to be free as they should respectively arrive at the age of 31 years" does not amount to such an emancipation as the law requires. The fact found by the jury that "Miss Brown by her will recognized the terms of sale of such negroes to be, that they were to be free at 31 years of age" is an encroachment on the province of the court, whose duty it is to decide as to the import and construction of last wills and testaments. It will be found upon a reference to this will, that the petitioner (Moses) is not mentioned in such will, is not referred to by the testatrix, that there is not the remotest implication by which his freedom can be effected.

Notwithstanding the said will does not emancipate the petitioner, and although the law peremptorily requires the emancipation

to be by deed or last will and testament, the court gives to the petitioner his freedom at the age of 31 years.

The error above assigned involves a question of law, of extensive interest, both public and private—of a public interest, since it admits the reception of parol evidence to explain and enlarge the meaning of a will, to give to a last will and testament a different meaning from that which the words in themselves evidently and necessarily imply — of a private interest to the defendant, since there are several other slaves having similar claims, in whose favour similar verdicts would be found, and which verdicts would be construed by the court, as having a similar legal effect and operation, unless the Supreme Court shall reverse so erroneous a decision.

Wherefore, your petitioner prays that your honor will issue an order to the clerk of the said court, directing him to issue a writ of error under the terms and conditions prescribed by law in all such cases, and as in duty bound he will ever pray.

SWANN & SWANN,
Attorneys.

On the back of the aforegoing petition was the following order to wit:

I have read and considered the within petition of Richard B. Alexander, the defendant in the within mentioned case, and also the proceedings of the circuit court therein referred to, and complained of by the petitioner, a copy of which proceedings accompanies this petition, and being of opinion that the errors assigned and relied on, involve questions of law of such extensive interest and operation, as to render the final decision of them by the Supreme Court desirable, I do hereby direct the clerk of Washington county to issue the writ of error as prayed for, upon the terms and conditions in such cases prescribed by law.

R. B. TANEY.

Whereupon, in pursuance of the above order a writ of error issued, and a citation, directed to the said Moses Graham as follows, to wit:

THE UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the Judges of the Circuit Court of the United States for the District of Columbia, sitting for the County of Washington, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said court before you or same of you, between Moses Graham, plaintiff, and Richard B. Alexander, defendant, a manifest error hath happened, to the great

damage of the said Richard B. Alexander, as by his complaint appears. We being willing, that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington in said Supreme Court now sitting, and that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to that error, which of right, and according the laws and custom of the United States should be done.

Witnes the Hon. Roger B. Taney, chief justice of the said Supreme Court.

Issued this 3d day of February, 1841.

W. BRENT, *Clerk*,
Circuit Court D. C. for Washington County.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to Moses Graham, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States immediately, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the District of Columbia, sitting for the county of Washington, wherein Richard B. Alexander is plaintiff in error, and you are defendant in error, to shew cause if any there be, why judgment rendered against you should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the Hon. W. Cranch, chief judge of the circuit court of the District of Columbia, this third day of February, 1841.

W. CRANCH.

Served the above citation on Francis S. Key, Esq., attorney for Moses Graham.

Washington City, District Columbia, January the ninth, 1841.

ALEXANDER HUNTER,
Marshal, District of Columbia.

Know all men by there presents that we, Richard B. Alexander and William B. Alexander, are held and firmly bound unto the United States, in the full and just sum of twenty-four hundred dollars, current money of the United States, to be paid to the said United States or their certain attorney, or assigns, to which payment well and truly to be made and done, we bind ourselves and each of us, our, and each of our heirs, executors and administrators jointly and severally, firmly by these presents, sealed with our seals and dated this third day of February 1841.

Whereas, lately at a circuit court of the District of Columbia, sitting for the county of Washington, in a cause depending in the said circuit court, wherein a certain Moses Graham was plaintiff, and the said Richard B. Alexander was defendant, judgment was rendered in favour of the said defendant, and he having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Moses Graham, citing and admonishing him to be and appear at a Supreme Court of the United States immediately.

Now the condition of the above obligation is such, that if the said Richard B. Alexander shall prosecute his writ to effect and answer all damages and costs of he fails to make his plea good, then the above obligation to be null and void, otherwise to be and remain in full force and virtue in law.

R. B. ALEXANDER. [L. S.]
W. B. ALEXANDER. [L. S.]

Signed, sealed and delivered in the presence of
WM. THO. SWANN.
EDW. SWANN.

Style of Court.

DISTRICT OF COLUMBIA, *ss.*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the fourth Monday of March, being the twenty-third day of the same month in the year of our Lord one thousand eight hundred and forty, and of the Independence of the United States the sixty-third.

Present: The Honorable William Cranch, Chief Judge; Buckner Thruston and James S. Morsell, Asst. Judges; Alexander Hunter, Esq., Marshal; William Brent, Clerk.

In the records of the proceedings of the said court, among others, are the following, to wit:

Parties.

MOSES GRAHAM,
vs.
RICHARD B. ALEXANDER.

Be it remembered, that heretofore, to wit, on the first day of June in the year of our Lord one thousand eight hundred and thirty-eight the said Messrs. Graham by John J. Dermott, Esq., filed in court here, the following petition, to wit:

Petition.

To the Honorable the Judges of the Circuit Court of the District of Columbia, for the County of Washington.

The petition of Moses Graham humbly complaining, sheweth unto your honors, that your petitioner is entitled to his freedom, and is unjustly held in bondage by Richard B. Alexander who claims your petitioner as his slave. Wherefore, your petitioner prays your honors to grant a subpœna, to the said Richard B. Alexander directed, and such relief in the premises as may be according to law.

JOHN J. DERMOTT,
Attorney for Petitioner.

Plea of not free and issue joined, venire facias to

Whereupon, subpœna issued as prayed, and returned executed at the next November term of the said circuit court.

Thereupon the said Richard B. Alexander by Brent and Brent, Esquires, his attornies, comes into court here and defends the complaint aforesaid, when and where the said court shall take the same into consideration, and for plea they say that the said petitioner is not entitled to his freedom as is alledged, and of this he puts himself upon the country, and the said petitioner in like manner and so forth.

March Term 1839.

Therefore let a jury thereon appear before the court here *here* on the fourth Monday of March next, by whom, &c., and who neither, &c., to recognize, &c., because as well, &c., the same day is given to the said parties there and *there and* so forth.

Appearance and Continuance to November Term 1839.

At which mentioned fourth Monday of March in the year of our Lord one thousand eight hundred and thirty-nine, comes again into the circuit court here, as well the said Moses Graham by his attorney aforesaid, as the said Richard B. Alexander by his attorney aforesaid, thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attornies aforesaid, and by order of the court here thereon, the said cause is continued until the fourth Monday of November next.

And now, to wit: the said fourth Monday of November, in the year of our Lord one thousand eight hundred and thirty-nine, comes into the circuit court here, as well the said petitioner by his attorney aforesaid, as the said defendant by his said attorney: Whereupon, for trying the issue aforesaid, it is ordered by the

court here, that twelve persons from the pannel of petit jurors, returned to the court here by the marshal of the District of Columbia be called, who being called come, to wit:

Jury.

1. C. H. W. Wharton,
2. Thomas T. Barnes.
3. Walter Clarke,
4. George Lowry,
5. John Boyle,
6. Samuel Smoot,
7. Anthony Smith,
8. Henry H. McPherson,
9. Charles Butler,
10. Richard Brook,
11. Philip A. Ricards,
12. Edward N. Roach,

who being duly empannelled and sworn to say the truth in the premises, upon their oath, do say:

Special Verdict.

We find, that the petitioner is the son of Milly who was the slave of Miss Brown, who resided in Georgetown about the year 1790 and for two or three years afterwards, with her sister Mrs. Magruder, that she afterwards lived with the same sister in Maryland, and afterwards, but not before 1806, with her sister Mrs. Alexander in Alexandria county; that during all this time the petitioner's mother and grandmother belonged to Miss Brown, who sometime about the year 1813, while she was living with Mrs. Alexander, brought Milly from Washington county where she had been living, hired out by her mistress for one or two years, to Mrs. Alexander, in Alexandria county.

That Milly then had two female children, and that the petitioner was born afterwards, and while Milly was at Mrs. Alexander's. That Mr. Brown on bringing her to Mrs. Alexander's sold Milly and her two children to Mrs. Alexander, she to be free at 31, and her children then born, and those afterward to be born, at the same age.

That the petitioner was held by Mrs. Alexander during her life, and by her administrator the present defendant since, not as a slave for life, but as entitled to freedom at 31 years of age.

That Miss Brown died in 1825 making her last will and testament (copied in page 20).

That Miss Brown by her will recognized the terms of sale of said negroes to her sister to be, that they were to be free at 31 years of age.

And that the petitioner will be on the 25th of December, 1839, twenty-six of age.

That Miss Brown sent an officer for Milly to Georgetown, where she was then residing, and from whence she was brought in 1813 to her sister with the intention to sell her and her childern to her sister, and did thereupon sell her as before stated on the terms and conditions stated in her will.

And that said Milly was kept in Alexandria county from the time of her said importation till she became 31 years of age, when she was suffered to go free and is free now. And the petitioner was so kept in said county till the filing of this petition.

That Miss Brown when she had the said Milly and her two children brought into Alexandria county, or at any time before or afterwards, did not take the oath required by the 4th Section of 17th December 1792. And if upon the facts aforesaid, the law be for the petitioner, we find for the petitioner, and if otherwise we find for the defendant.

C. H. W. WHARTON,
Foreman.

Continuance curia advisare vult to March Term 1840.

Whereupon, for that the court here, are not advised to give their judgment of and upon the premises aforesaid, day therefore is further given to the said parties to hear thereof their judgment, until the fourth Monday of March next, for that the said court here, are not advised, &c.

At which mentioned fourth Monday of March, in the year of our Lord one thousand eight hundred and forty, comes again into the circuit court here, as well the said petitioner by his attorney aforesaid, as the said defendant by his attorney aforesaid: Whereupon, all and singular the premises, being by the court here seen, heard and fully understood, and upon full consideration the court is of opinion, that the petitioner will be entitled to his freedom on the 26th of December, which will be in the year 1844 and not before.

Judgment of the Court for the Defendant upon Special Verdict.

And therefore that the judgment at law upon the said special verdict must be for the defendant, but inasmuch as the said petitioner has filed his bill in equity, stating his fears that the said defendant Richard B. Alexander will remove the petitioner from the District of Columbia, under the laws whereof his claim for freedom has accrued, and from the jurisdiction of this court, before the said 26th of December 1844, whereby he may be deprived of the means of establishing his right to freedom when it shall have become absolute. It is this 18th day of April 1840, ordered that the said defendant Richard B. Alexander shall not be permitted to take the said petitioner into his possession, (the said petitioner now being in the custody of the marshal for safe keeping and for the protection of the rights of the said petitioner) until he the said Richard B. Alexander shall have given bond to the United States with good security in the penalty of one thousand dollars, with condition to be void if he shall have the petitioner forthcoming, and produce him to this court, or to the marshal of this district on the aforesaid 26th day of December 1844, the said bond and security to be approved by this court, or one of the judges

thereof: Provided however that the said petitioner Moses Graham shall have first given security to the said Richard B. Alexander by bond with good security to be approved by this court, or one of the judges thereof, in the penalty of $800, conditioned, that the he the said Moses shall continued faithful in the service of the said Richard B. Alexander in the District of Columbia, until the said 26th day of December 1844. And upon the said bonds being given and approved as aforesaid and filed in this court, or in the clerk's office, the said petitioner shall be delivered up to the said R. B. Alexander upon demand.

Will of Miss Brown referred to in Special Verdict.

I, Elizabeth Brown of the county of Alexandria, do make this my last will and testament in manner following, hereby revoking all former wills by me made.

First. Whereas I have heretofore sold to my sister Alexander, a negro woman called Milly, and her two children Ann and Rachael, since which time, the said Milly has had two other children, Jenny and Christy. And whereas the term for which the said Milly was sold has expired, and her said children are bound to serve till they shall have attained the age of thirty-one years respectively. Now it is my will and desire that the time of the said four children of Milly shall be purchased by my executor and that they shall be forthwith emancipated by him, and I do hereby authorize him to make such purchase out of the estate I shall leave. But as the amount for whieh I sold the said Milly and her two children, has never been paid to me, it is my desire that that debt shall be applied if practicable towards the said purchase.

Secondly. I devise to my niece Frances Swann, widow of William T. Swann deceased, my blankets and sheets, and my star set pin for the hair and one, *thicls sills.*

Thirdly. The residue of my best cloaths I devise to my niece Elizabeth Magruder.

Fourthly. My watch and the rest of my jewellry except the said set pin, I devise to my niece Elizabeth Tyler.

Fifthly. I devise my beds and pillows to my nephew William B. Alexander.

Sixthly. I devise my old set of drawers to, and looking glass to my sister, Sarah Tyler, widow of Charles Tyler.

Seventhly. I direct my common cloathes to be given to the following servants who have attended on me, that is to say: Jenny, Milly and Ann, living with Mrs. Frances Swann and Milly, Venus and Lucinda, living at Preston.

Eighthly. I devise the residue of my estate of every description to my nieces Elizabeth Magruder, Elizabeth Tyler and Mary Swann (daughter of Mrs. Frances Swann).

Ninthly. I constitute and appoint my nephew Richard B.

Tyler, executor of this my will. In witness whereof I have hereto set my hand this seventh day of June 1825.

ELIZABETH BROWN.

Signed, and published by the testatrix as her last will and testament in our presence, who in her presence and at her request have hereto set our names in attestation thereof.

R. J. TAYLOR.
THOS. SEMMES.

At a session of the orphan's court for the county of Alexandria, in the District of Columbia, the 5th day of September, 1825, this last will and testament of Elizabeth Brown deceased was proved by the oaths of R. J. Taylor and Thomas Semmes, witnesses thereto and ordered to be recorded, and on the same day letters testamentary were granted to Richard B. Tyler the executor named in said will.

A. MOORE,
Reg'r Wills.

A copy,
attest A. MOORE,
Reg. Wills.

Test. W. BRENT, *Clerk.*

Appeal to Supreme Court.

And whereas, afterwards, to wit: On the nineteenth day of April in the year of our Lord one thousand eight hundred and forty, the said Richard B. Alexander produced and filed in court here, the United States writ for the correcting of errors, of and upon the judgment aforesaid, directed to the judges of the circuit court of the District of Columbia, in the county of Washington; and in pursuance thereof, and according to the form and effect of the law in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and all things thereunto relating, with the writ of error aforesaid, and a copy of the appeal bond hereunto annexed, is hereby transmitted to the said Supreme Court accordingly.

Clerk's Certificate and Seal.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court at the city of Washington this 18th day of December, 1840.

[L. S.]

W. BRENT, *Clerk.*